BIAC

Quarterly Bulletin

Volume 11 | Number 1 | January-March 2022

Bangladesh International Arbitration Centre

The Institution for Alternative Dispute Resolution

Bangladesh International Arbitration Centre (BIAC) is the first arbitration institution of the country. It is registered as a not-for-profit organisation and commenced operations in April 2011 under a licence from the Government of Bangladesh. The International Chamber of Commerce-Bangladesh (ICC-B), the world business organisation, Dhaka Chamber of Commerce & Industry (DCCI) and Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka are the Sponsors of BIAC. The International Finance Corporation (IFC), the private sector arm of the World Bank, with funds from UK Aid and European Union, had supported BIAC in the initial stages under a co-operation agreement. BIAC provides a neutral, efficient and reliable dispute resolution service in this emerging hub of South Asia's industrial and commercial activities. BIAC is governed by a Board comprising country's distinguished personalities including Presidents of the three prominent business Chambers of the country, thereby enriching the organisation with their vast experience and knowledge. An experienced, full-fledged secretariat runs the Centre on a day-to-day basis.

From the very beginning, BIAC has been offering facilities for arbitration and mediation hearings through its internal infrastructure, which includes meeting rooms, audio-aides and recording facilities, private consultation rooms, transcription and interpreter service. BIAC also provides all necessary business facilities, like video conferencing, multimedia projection, computer, internet access etc. Full-fledged secretarial services and catering are also available on request. BIAC offers specific services for non-institutional arbitration. Parties are free to choose individual elements of its services.

BIAC launched its own institutional rules for arbitration and mediation, namely, BIAC Arbitration Rules 2011 and BIAC Mediation Rules 2014 both being critically analysed and reviewed by a number of eminent national and international jurists and legal experts. These Rules have been superseded by launching BIAC Arbitration Rules 2019 and BIAC Mediation Rules 2019 which have been made more user-friendly and expanded the scope of the Rules in conformity with the growing need of time. BIAC has its own Panel of Arbitrators consisting of distinguished Jurists and Judges including former Chief Justices of Bangladesh and a few former Justices of the Supreme Court. Eminent experts and trained Mediators are on the BIAC's List of Mediators. BIAC has developed all the facilities required for systematic and comfortable Arbitration and Mediation proceedings including virtual hearing considering the safety of clients, staff and patrons during the pandemic.

As the only Alternative Dispute Resolution (ADR) institution in the country, apart from facilitating Arbitration and Mediation, BIAC also provides training courses on ADR, especially Arbitration, Mediation and Negotiation. BIAC has taken initiatives to provide specialised ADR training courses for different sectors, for instance, ADR in Money Loan Court Act, ADR in Procurement Disputes, ADR in Human Resource Management and others. BIAC regularly arranges certificate training courses abroad, jointly with those ADR centres with which BIAC has signed collaboration agreements. BIAC has also taken initiatives to provide specialised, sector-based customised training programmes on ADR depending on the organisations' need. Under this initiative, for the first time, BIAC organised a day long training programme for 24 Senior Assistant Secretaries and Assistant Secretaries of the Legislative and Parliamentary Affairs Division under the Ministry of Law, Justice and Parliamentary Affairs who are actively involved in vetting laws from all Ministries and Divisions of the Government. BIAC will arrange training for their Deputy Secretaries in due course.

During the ongoing COVID-19 pandemic, BIAC organised the first online learning session through Zoom platform for the students of Law and Business. BIAC has since taken initiatives to conduct a series of online training programmes on Arbitration for professionals, the legal fraternity, Government officials, NGO representatives, corporate personnel, bankers and individuals.

From the very beginning, BIAC has been working relentlessly to create awareness about ADR facilities by arranging outreach programmes, seminars, webinars, workshops and dialogue sessions. Although COVID-19 has frustrated many of its activities, BIAC hosted a number of webinars jointly with its local and regional partners. These events gave us international exposure and we had the opportunity to highlight our endeavours towards making Bangladesh a regional hub of ADR practices.

BIAC is recognised by national and international institutions including the Permanent Court of Arbitration, the Hague, the Netherlands, many other International ADR centres and Corporate Companies, Banks, Real Estate Companies, NGOs, Universities, Law and Business Chambers, and Financial Institutions in Bangladesh.

BIAC offers Membership to practitioners, stakeholders, students and interested individuals from home and abroad to create a knowledge and resource sharing platform. The platform has been designed to enable all interested parties to enhance individual knowledge and contribute towards enriching the ADR landscape of the country. It also reaches out internationally to individuals and institutions. All interested professionals including ADR facilitators, such as Arbitrators, Mediators, practicing lawyers, academics, bankers, representatives of commercial and business organisations and students can apply. BIAC Membership is intended to reflect professionalism and recognition in the region and throughout the globe.

In 2020, BIAC launched an Inter University Arbitration Contest for the first time for Law Department students of the Universities in Bangladesh, which was organised online in the wake of COVID-19. In 2021, under the generous sponsorship of The City Bank Ltd. BIAC arranged a more broad-based International Contest with online participation by students of seven national and international universities. The City Bank-BIAC International Inter University Arbitration Contest 2021 was held with great enthusiasm. BIAC has plans to make it into a regular annual event.

STATISTICS SINCE INCEPTION

MISSION

BIAC aims to embed the use of ADR as a commercial best practice to help/assist/facilitate creation of an ecosystem that fosters investment and is conducive to business

VISION

BIAC is committed to be a credible and a sustainable national institution that aims to offer international commercial best practices on ADR service to individual and institutions seeking to resolve commercial dispute

BIAC
Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

From the Editor

We are pleased to present the first edition of the BIAC Quarterly Bulletin for the year 2022. This Bulletin highlights BIAC's recent activities. It also includes a few scholarly articles, an interview on ADR perception, as well as the News and updates on International and Regional ADR Rules and Laws.

Business needs to resolve disputes expeditiously as business decisions cannot wait for an indefinite period. The Government of Bangladesh has enacted a few legislations for the effective application of ADR procedures including Mediation for dispensing disputes outside the court.

The Government has amended the Arthorin Adalat Ain (Money Loan Court Act), 2003 to include the provision of Mediation for the speedy disposal of loan default cases outside the court. Financial Institutions have to spend substantial amount of time and money to continue with such cases. Therefore, recently, the Law Minister Mr. Anisul Huq M.P emphasised the importance of using alternative dispute resolution (ADR) methods to quickly settle loan default cases. The Minister also expressed disappointment over the long delay in case disposition and the massive backlog of pending cases, stating that the final disposition of a civil case can currently take up to 60 years.

We appreciate the continued support of our readers, patrons, partners, and well-wishers in our efforts to contribute as much as possible to the mainstreaming of ADR so that an environment conducive to business and economic activity prevails, in furtherance of our commitment to be a credible and sustainable national institution that aims to offer ADR services to individuals and institutions seeking to resolve commercial disputes.

BIAC Quarterly Bulletin
Vol. 11, Number 1, January-March 2022

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Unique Heights (13th Floor), 117 Kazi Nazrul Islam Avenue, Dhaka 1217, Bangladesh. Tel: +8802 55138092-93
Web: www.biac.org.bd; E-mail: info@biac.org.bd, biac.org.bd@gmail.com

BIAC News

Kaiser A. Chowdhury takes reins of BIAC as Chief Executive Officer

1 February, 2022

Kaiser A. Chowdhury joined Bangladesh International Arbitration Centre (BIAC) as its Chief Executive Officer on Tuesday, February 1, 2022.

Kaiser A. Chowdhury has been a banking professional, starting his career with ANZ Grindlays Bank (1975-1999), where he spent most of his time in the Credit arena including a stint at Grindlays International Training Centre, Chennai, India as a Credit Instructor. He served One Bank Ltd. (1995-2005) as its Deputy Managing Director, AB Bank Limited (2005-2012) as its President & Managing Director and Meghna Bank Limited (2013-June 2014) as its founder Managing Director and CEO. He was also the Principal of the Dhaka Bank Training Institute.

During his career Mr. Chowdhury attended several training courses/workshops at home and abroad. He holds a Masters Degree in Economics from the University of Dhaka (1969-1973)

35th Meeting of the BIAC Board held

5 March 2022

The 35th Meeting of Bangladesh International Arbitration Centre (BIAC) Board was held online via Zoom on 5 March 2022. The meeting was presided over by Chairman, BIAC Board, Mr. Mahbubur Rahman.

At the beginning of the Meeting Mr. Mahbubur Rahman along with other members of the Board, welcomed Mr. Kaiser A. Chowdhury who joined BIAC on 1 February 2022 as its new Chief Executive Officer.

The BIAC Board also welcomed Mr. Md. Saiful Islam, as the ex officio Member of the Board who has recently been elected President of MCCI. The Board also welcomed Mr. Muhammad A. (Rumee) Ali as a new Member of the Board upon the nomination of ICC-Bangladesh. Minutes of the 34th Meeting of the Board held on 23 December 2021 were adopted unanimously. In the Meeting, the Board elected Muhammad A. (Rumee) Ali as its Vice Chairman, effective from 1 March 2022. A number of decisions were taken in the Meeting.

The Meeting was attended by the following Board Members and Executives:

Left to right: - 1st row- Mr. Mahbubur Rahman, Chairman, Mr. Muhammad A. (Rumee) Ali, Vice Chairman, and Mr. A. K. Azad, Member.

2nd row: Mr. Kutubuddin Ahmed, Member, Mr. Anis A. Khan, Member, and Mr. Osama Taseer, Member.

3rd row: Mr. Kaiser A. Chowdhury, Chief Executive Officer, and Ms. Mahbuba Rahman Runa, General Manager and Secretary to the Board.

BIAC Announces Election of Muhammad A. (Rumee) Ali as Vice Chairman of BIAC Board

5 March 2022

Bangladesh International Arbitration Centre (BIAC) is pleased to announce that its Board has elected Muhammad A. (Rumee) Ali as the Vice Chairman, effective from 1 March 2022. Muhammad A. (Rumee) Ali was inducted as a Member at the 35th Meeting of BIAC on 5 March 2022, upon the nomination of ICC-Bangladesh.

Prior to this position, Muhammad A. (Rumee) Ali served as BIAC's Chief Executive Officer from October 2015 to 31 January 2022. Under his leadership, BIAC has grown tremendously, expanding its activities in such areas as arrangement of foreign training sessions, seminars, conferences, arbitration contests and promoting collaborations with regional and international ADR Centres, government organisations, business entities and financial sectors.

Among his many assignments in the past, Muhammad A. (Rumee) Ali was Deputy Governor of Bangladesh Bank, CEO of Standard Chartered Bank, Chairman of BRAC Bank, Founder Chairman of Bkash - the first mobile financial service provider in the country. He also served as the Managing Director, Enterprises and Investments of BRAC. Currently Mr. Ali is the Chairman of AB Bank Ltd, Bangladesh.

BIAC ties up with CRCICA, Egypt

2 January 2022

BIAC has recently signed online a Memorandum of Understanding (MoU) with the Cairo Regional Centre for International Commercial Arbitration (CRCICA), Egypt. CRCICA is an independent non-profit international organisation established in 1979 under the auspices of the Asian African Legal Consultative Organisation (AALCO) in pursuance of AALCO's Doha Session held in 1978 to establish regional centres for international commercial arbitration in Asia and Africa.

The MoU was signed by Mr. Muhammad A. (Rumee) Ali, CEO of BIAC and Mr. Ismail Selim, Director, CRCICA on behalf of their respective organisations. The MoU is intended to establish a basis upon which both organisations may explore areas for further co-operation in respect of Alternative Dispute Resolution (ADR) provided by both. It will also serve to address the common interests of BIAC and CRCICA to use each other's venue for arbitration and mediation with facilities support and assistance for the parties' administered proceedings. Under the MoU, BIAC and CRCICA shall jointly organise seminars, conferences and educational programmes on arbitration and mediation and other methods of ADR in Bangladesh and Egypt.

General Manager of BIAC joins Webinar on Arbitration Services to prevent and solve Cross Border Disputes

5 March 2022

Ms. Mahbuba Rahman, General Manager of BIAC was invited to participate as one of the speakers at the Webinar on "Arbitration Services to Prevent and Solve Cross Border Disputes" which was held online on 5 March 2020. The event was organised by Kunming International Commercial Arbitration Service Center (KICASC). Ms. Mahbuba Rahman presented on the topic "ADR in resolution of Procurement Disputes in Bangladesh". She highlighted the Resolution of Procurement Disputes under Laws of

Bangladesh, World Bank and other development partners' Procurement Guideline, Role of CPTU and other related issues. In her presentation, she also praised the role of the Bangladesh International Arbitration Centre (BIAC) for promoting ADR in Bangladesh. In her speech, she emphasised on the trade relationships between China and Bangladesh and the role of BIAC and KICASC in helping investors in speedy disposal of cases through ADR. Moderator of the event was Ms. Zhang Jingmei, Founder Director of KICASC and other speakers included Mr. Li Hu, Vice Chairman of the China Maritime Arbitration Commission (CMAC), Mr. Pasit Asawawattanporn, Managing Director of the Thailand Arbitration Center (THAC), Mr. Hnin Oo, Principal of Myanmar Arbitration Agency, Mr. Gu, Representative of the Laos Judiciary, and experts from Italy and Sri Lanka law firms, Mr. Avv. Alessandro Benedetti and Mr. Priyantha Gom.

Experts stress the importance of Alternative Dispute Resolution (ADR) and the UN Convention on Contracts for the International Sale of Goods (CISG).

13 March, Dhaka

Bangladesh International Arbitration Centre (BIAC) organised a Webinar on "Alternative Dispute Resolution and International Sale of Goods: Time to Benefit from CISG?" jointly with the United Nations Commission on International Trade Law (UNCITRAL) - Regional Centre for Asia and the Pacific (RCAP) on 10 March 2022 via Zoom. International speakers spoke about the CISG and Uniform Sale Law, including benefits of dispute resolution along with the regional perspectives while National speakers shared their views regarding the CISG and ADR perspectives in Bangladesh. Dr. Shah Md. Ahsan Habib, Professor, Bangladesh Institute of Bank Management (BIBM) was the Moderator of the Webinar.

Mr. Mahbubur Rahman, Chairman, BIAC Board and President of International Chamber of Commerce-Bangladesh, in his Closing Remarks expressed the view that the country will greatly benefit from adopting the CISG Convention as it provides a uniform regime for out of court dispute settlement for international sale of goods which will introduce greater certainty in commercial transactions. Substantive findings of this Webinar will be forwarded to the respective authorities of the Bangladesh Government for their review and favourable consideration, he further stated.

Mr. Kaiser A. Chowdhury, Chief Executive Officer of BIAC, in his Welcome Address, stated that hosting such a Webinar should lead us to take the initiative to establish an efficient framework for dispute resolution and work to ensure that the Bangladesh Government considers this Convention in order to improve Supply Chain Management efficiency and boost the usage of ADR.

Ms. Athita Komindr, Head of UNCITRAL RCAP, Republic of Korea also delivered Welcome Address on behalf of her organisation and provided an overview of UNCITRAL's mandate on furthering the progressive harmonization and modernization of international trade and commercial law, how the UNCITRAL RCAP promotes UNCITRAL's mandate to public and private stakeholders in the approximately 60 jurisdictions that it serves, and regional developments pertaining to the CISG. She also introduced UNCITRAL's first online learning course that is available on the UNCITRAL Website.

Mr. Luca Castellani, Legal Officer of UNCITRAL RCAP, discussed the basic features of the CISG, stressing its flexibility and ability to adjust to supervening circumstances. Noting the economic importance of export of manufactured goods, he invited Bangladesh to consider adoption of the Convention to increase governance and legal predictability in cross-border supply chains and to reduce transaction costs. He added that such step could significantly contribute to post-pandemic economic recovery.

Ms. Sherlin Tung, Partner, Withersworldwide, Hong Kong, discussed, from a practitioners view, the benefits of the CISG for commercial parties involved in international commercial transactions and gave insight on the situation of implementation of the CISG in Hong Kong. She noted that the CISG, like arbitration,

offers parties who enter into cross-border commercial transactions, a neutral law that is familiar to all parties involved as well as consistency and stability.

Mr. Md. Ahsan Ullah, Former Executive Director of Bangladesh Bank, stated that the CISG would help combat any situation arising out of International Trade Disruption and protect the interest of the parties. He urged that Bangladesh should seriously consider becoming a signatory to the CISG Convention in order to gain the current and future benefits of the Convention, which will help boost foreign investment in particular and the country's economy in general.

Mr. Rizwan Rahman, President of Dhaka Chamber of Commerce & Industry in his deliberation said that our international trade volume exceeds $100 billion within which the share of exports was US$ 45.39 billion in 2021 and with such a growth, commercial disputes increased as well. He stressed that Bangladesh is poised to graduate into a developing country by 2026 resulting in various changes and challenges in the international trade landscape. Following LDC graduation, the number of trade disputes are likely to increase manifold. He added that we need to adopt internationally recognised Conventions to ensure appropriate and effective dispute resolution for international trade transactions, investments and contracts. He further added that effective implementation of ADR and CISG would ease enforcing a contract to a large extent resulting in the sustainability of a smooth cross border trade environment and growth after post-LDC graduation.

Barrister Shafayat Ullah, Head of Mutual Trust Bank Group Legal Affairs Division opined that a Binding sale contract may ensure the safety and security of the Banks and Traders with the inclusion of the Arbitration Clause and Compensation Clause. He also stressed that in due course Bangladesh should become a ratifying country of the CISG and UNIDROIT Principles to be in a better position to protect itself during trade interruptions. However, he further added that for the sake of secured trade and financing, training programme, awareness and capacity building events are required to be arranged.

Dr. Shah Md. Ahsan Habib, Professor, Bangladesh Institute of Bank Management (BIBM), the Moderator of the Webinar, in course of summing up, attracted attention to the importance of the ratification of the CISG and UNIDROIT Principles and opined that the Contract Act 1872 should be amended and upgraded in line with CISG & UNIDROIT provisions to expand exports and also protect local traders from risks.

Asif S. Bhuiyan, Assistant Counsel of BIAC hosted the Webinar. The Programme was streamed Live on the Facebook Page of BIAC.

Bangladesh International Arbitration Centre (BIAC) and Khan Saifur Rahman & Associates (KSRA) sign Memorandum of Understanding (MoU).

16 March 2022

Bangladesh International Arbitration Centre (BIAC) signed an MoU with "Khan Saifur Rahman & Associates" (KSRA), in a simple ceremony at the BIAC premises on 16 March 2022 for mutual cooperation in providing Alternative Dispute Resolution (ADR) services.

KSRA is a leading law firm of Bangladesh with an experience of more than 65 years. Presently the firm is being headed by Barrister Khan Khalid Adnan.

The Parties have agreed to enter into a cooperation in order to promote institutional ADR in the country and internationally. Pursuant to this, the Parties will promote use of Institutional ADR clause in all commercial contracts, organise joint outreach and advocacy programs, work with different stakeholders, encourage capacity building, etc.

The MoU was signed by the Chief Executive Officer of BIAC, Mr. Kaiser A. Chowdhury and Head of the Chamber, Barrister Khan Khalid Adnan on behalf of their respective organisations. Also present in the occasion were Mr. Khalid Been Ahmed, Senior Associate from KSRA and General Manager Ms. Mahbuba Rahman and Assistant Counsel Mr. Asif S. Bhuiyan from BIAC.

Day –Long Training on Alternative Dispute Resolution held at BIAC on 29 & 30 March 2022

30 March 2022

29 March 2022 30 March 2022

As a part of its regular activities, Bangladesh International Arbitration Centre (BIAC), in collaboration with Accord Chambers, a leading law firm of the country, organised two separate day-long Training Courses on 'Alternative Dispute Resolution (ADR)'. The Training Sessions, held at the BIAC office in Dhaka on 29 and 30 March 2022, were attended by a total of 58 participants (batch of 29 each day) representing Law firms, Banks, Financial Institutions and Corporate Houses.

The Training Course covered such areas as ADR in Bangladesh Laws, various ADR mechanisms, Process of Arbitration, Mediation skills and practices, BIAC Dispute Settlement Clauses, ADR under the Code of Civil Procedure and Artha Rin Adalat Ain.

Mr. Suhan Khan, Barrister-at-Law, Advocate, Supreme Court of Bangladesh and Managing Partner, Accord Chambers and Ms Shireen Scheik Mainuddin, Accredited Mediator and Master Trainer, Centre for Effective Dispute Resolution (CEDR),UK and Principal Consultant, ASAAN were the Resource Persons for the training sessions. Mr. Kaiser A. Chowdhury, Chief Executive Officer of BIAC distributed Certificates to the Participants.

Bangladesh International Arbitration Centre (BIAC) and Akhtar Imam & Associates (AIA) sign an Memorandum of Understanding (MoU).

30 March 2022

Bangladesh International Arbitration Centre (BIAC) signed an MoU with "Akhtar Imam & Associates" (AIA), a leading law firm of the country, in a simple ceremony at the BIAC premises on 30 March 2022.

The Parties have agreed to mutually cooperate to promote institutional Alternative Dispute Resolution (ADR) services in the country and beyond. Pursuant to the MoU, the Parties will be able to exchange information and publications of mutual interest in the field of commercial arbitration and mediation and organise seminars, symposia, workshops, interactive sessions, conferences, awareness and training programmes relating to ADR.

The MoU was signed by the Chief Executive Officer of BIAC, Mr. Kaiser A. Chowdhury and the Partner of the Chamber, Barrister Reshad Imam on behalf of their respective organisations. Also present in the occasion were Barrister Darras Abdullah, Associate from AIA and General Manager Ms. Mahbuba Rahman and Assistant Counsel Mr. Asif S. Bhuiyan from BIAC.

From the Media

It takes up to 60 years to dispose of a civil case!

The Daily Star
10 January 2022

Expressing disappointment over the long delay in case disposal and huge backlog of pending cases, Law Minister Anisul Huq said sometimes around 60 years' time is needed for final disposal of a civil case at present.

Before, it used to take around 30 years on an average, he added.

"If this trend continues, the judiciary will come under question. The judges must discharge their duties with utmost sincerity, honesty and competence in order to reduce the backlog of cases and to tackle the challenges."

He said this while speaking as chief guest at a function organised on the occasion of inauguration of a special foundation training course for the assistant judges at Judicial Administration Training Institute in Dhaka.

He said the government enhanced the facilities of judges including raising their salaries, taken steps for providing them with necessary training, and improved the infrastructures on the court premises to tackle challenges of case backlogs.

The government has undertaken a project of a cost of Tk 2,200 crore for establishing e-judiciary in the country, he said, adding that around 3.5 lakh litigants have been given relief through virtual courts during the pandemic.

He said people want justice in a short time and the judges must work to fulfill their desire. He also said the government will take all possible steps including use of Alternative Dispute Resolution for reducing the backlogs.

https://www.thedailystar.net/news/bangladesh/politics/news/it-takes-60-years-dispose-civil-case-2936086?amp&fbclid=IwAR0FuBgZvyvhFt4c103zpXiT2RnGUcreumJGAY8tWC0Dy-DXrBDksstjHXU

Law Minister Anisul Huq said as chief guest on the occasion of inaugurating 144th refresher course at Judicial Administration Training Institute (JATI) for the joint district and sessions judges of Arthorin Adalat (finance loan court), the alternative dispute resolution (ADR) system must be used successfully in order to quickly settle the loan default related cases and illogical adjournments of their hearings will have to be stopped for this purpose.

The Daily Star
23 February 2022

Law Minister Anisul Huq today said loans involving thousands of crores of taka remain unpaid due to the long delays in disposal of Arthorin (money loan) related cases.

Besides, the finance organisations have to spend huge amounts of money for running such cases and therefore, complexities are created in their management, he said.

He made the comment while speaking as chief guest to a function virtually organised on the occasion of inaugurating 144th refresher course at Judicial Administration Training Institute (JATI) for the joint

district and sessions judges of Arthorin Adalat (finance loan court).

Minister Anisul said the alternative dispute resolution (ADR) system must be used successfully in order to quickly settle the loan default related cases and illogical adjournments of their hearings will have to be stopped for this purpose.

He said the government has amended the Arthorin Adalat Ain (Finance Loan Court Act), 2003 for the speedy disposal of such cases outside the court, but this method is not being used successfully for different reasons.

The law minister said reducing the backlogs of all types of cases is the main challenge for the judiciary now.

The people not only want justice, they also seek expeditious trials of the cases now and that is why the judiciary will have to come forward to provide service to the people, Anisul added.

https://www.thedailystar.net/news/bangladesh/crime-justice/news/thousands-crores-taka-remain-unpaid-due-long-delays-disposal-money-loan-cases-2968166

Anisul stresses ADR for removing case backlog

The Financial Express

7 March 2022

Law, Justice and Parliamentary Affairs Minister Anisul Huq on Sunday laid emphasis on alternative dispute resolution (ADR) system to ease existing backlog of cases, reports BSS.

"We have to encourage justice seekers and lawyers to use this method," he said while addressing virtually the inaugural function of 23rd special training course for government pleaders (GPs) and public prosecutors (PPs) organized by Judicial Administration Training Institute (JATI).

"Judiciary consists of judges, GPs, PPs, lawyers, court employees and other judicial officers. So, GPs and PPs can play an important role in establishing the rule of law in both civil and criminal matters as stakeholders of the judiciary," he added.

Indicating towards allegations of wasting courts' time by GPs and PPs, the law minister further said as government law officers, you all must follow all the directions regarding time management of the court.

"You (GPs and PPs) have to remain aware about producing witnesses on time and examining them on the due date. You have to keep in mind that you have been appointed to move cases for the state. It would be unfortunate if state interest is not protected by you or justice seekers are deprived of fairness because of you."

https://today.thefinancialexpress.com.bd/politics-policies/anisul-stresses-adr-for-removing-case-backlog-1646581486

> ***"There are those who feel that meditation is unrealistic or takes them out of the world, and if that was your experience with mediation, you weren't meditating."***
>
> *— Frederick Lenz*

International News

Singapore: Court of Appeal sets aside arbitral award for breach of natural justice

15 February 2022

The Court of Appeal in CAJ v. CAI [2021] SGCA 102 has upheld an earlier High Court decision to set aside part of an arbitral award, in circumstances where the party was deprived of its fundamental right to be heard – i.e., the right to present its case, and the right to respond to the case against it. While cases of arbitral awards being set aside are uncommon, this case shows that the Singapore courts will intervene when there are meritorious challenges.

Factual Background

In CAJ v. CAI [2021] SGCA 102, the defendants appealed against an earlier decision of the General Division of the High Court (the "High Court") to set aside part of an arbitral award. The High Court had allowed the setting aside application, in circumstances where the tribunal had accepted an extension of time (EOT) defense that was raised by the defendants for the very first time in its written closing submissions.

While the claimant had responded to the new EOT defense in its own written closing submissions, the defense had not been raised during the oral hearing and so there had been no opportunity to adduce evidence or to cross-examine witnesses on the requested EOT. In its award, the arbitral tribunal accepted that there had been "no direct evidence" before it on the issue, but nevertheless considered itself "capable of fairly and reasonably determining" an appropriate EOT, in view of its own "experience in these matters".

The High Court's Decision

The High Court allowed the setting aside application because, among others:

- The claimant did not have a fair and reasonable opportunity to respond to the EOT defense.
- The Tribunal had relied substantially on its professed experience in reaching its decision on the EOT defense.

The defendants challenged the High Court's decision by arguing, among others:

- The High Court took too narrow a view of the scope of the parties' submission to arbitration, as well as the Terms of Reference, the pleadings and the draft Lists of Issues.
- The claimant had been given a fair and reasonable opportunity to respond to the EOT defense, and the claimant had been given the opportunity to address the chain of reasoning adopted by the tribunal.

The Court of Appeal's Decision

The Court of Appeal rejected the defendants' arguments, and explained that:

- It was impermissible for the court or the tribunal to "broadly" construe the pleadings, Lists of Issues and Terms of References in the arbitration in order to read in a defense that was not pleaded.

This was a "classic case of breach of natural justice". The EOT defense was a completely new defense, which the claimant did not have notice of until its belated appearance in the defendants' closing submissions. Further, the claimant did not have the opportunity to respond to the tribunal's unarticulated "experience", which the tribunal relied on to reach its findings.

Comments and Key Takeaways

- Pleadings in arbitration proceedings provide a convenient way for the parties to define the jurisdiction of the tribunal. This is because parties can set out the precise nature and scope of the disputes in respect of which they seek the tribunal's adjudication.
- To determine whether a tribunal has the jurisdiction to adjudicate on a particular dispute, it is necessary to refer to each party's pleaded case to see whether the issues of law or fact raised in the pleadings cover that dispute.
- Even where a new issue is raised by the tribunal on its own motion as a result of the evidence adduced during the trial, the defense should be amended for good order.
    - This is so that the claimant may file an amended reply and, if necessary, call rebuttal evidence on the new issue. This is an established process to ensure fairness to the party affected by the new issue.
    - Only a new fact or change in the law arising after a submission to arbitration which is ancillary to the dispute submitted for arbitration and which is known to all the parties to the arbitration need not be pleaded. This is because it is already part of that dispute.

Parties should ensure that key legal or factual arguments are expressly set out in their pleadings. Where new facts or legal points arise which parties wish to raise for the tribunal's consideration, parties should amend their pleadings at an early stage to set out these points. Doing so allows the tribunal the opportunity to consider if further evidence or submissions should be permitted to address these new points, and can help to mitigate against any accusations of failing to afford the opposing side a right to be heard.

At the same time, if parties are made aware of failures which taint the arbitral process, they should clearly and unequivocally raise their complaints to the tribunal at the earliest opportunity. If, as was the case here, the alleged breach of natural justice only arises at a late stage, an affected party should nonetheless raise their objection to the tribunal as soon as possible and as a matter of priority, so that the record will show the party was not simply content to proceed with the arbitration.

https://globalarbitrationnews.com/singapore-court-of-appeal-sets-aside-arbitral-award-for-breach-of-natural-justice/

The Chief Justice of India stresses prominence of mediation for commercial dispute resolution

19 March 2022

The Chief Justice of India, N.V. Ramana, said on Saturday that mediation is increasingly gaining prominence in the international commercial sphere as a dispute resolution mechanism.

Quoting famous author R.L. Stevenson, the CJI said, "Compromise is the best and cheapest lawyer."

Ramana, who was attending the fourth edition of the international conference on 'Arbitration in the era of globalisation' in Dubai, said, "Private mediations, which take place at the pre-litigation stage, are also becoming more prevalent in the country. Most arbitration clauses in commercial contracts have a multi-tiered approach, where the first attempt to resolve the dispute between parties is through mediation or negotiation.

"Wherever I travel, I am often asked how investor-friendly the Indian judicial system is. My answer is always the same: You can trust the Indian judiciary for its absolute independence and its inherent constitutional strength to treat all parties equally and equitably."

A pre-requisite for achieving globalisation in its true sense is ensuring universal respect for the rule of law. Trust in the globalised world can only be built by creating institutions with a strong emphasis on the rule of law.

The CJI further said that rule of law and arbitration are not in conflict with one another.

"Both arbitration and judicial adjudication aim to serve the same goal -- the pursuit of justice. The Indian courts are known for their pro-arbitration stance. The courts assist and support arbitration, and leave the substantive part of adjudication to the Arbitral Tribunal itself.

"Modern arbitration law in India can be traced back to 18th and 19th century, laws such as the Bengal Regulation Act and Madras Regulation Act, where parties to the dispute could submit themselves before an arbitrator. For the first time in 1940, we had a pan-India arbitration act," he said.

Meanwhile, in 1985, keeping in view the increasing cross-border transactions and disputes arising thereof, UNCITRAL came out with a Model Law on International Commercial Arbitration, he said.

"In India, with economic liberalisation, a need was felt to provide a viable alternative to the parties, both national and international, to resolve their commercial disputes. The Arbitration and Conciliation Act, 1996 was enacted in line with the model law with the hope to provide an effective alternative to court-based resolution.

"Then Prime Minister of India, P.V. Narasimha Rao, had said during the inauguration of the International Conference on Alternate Dispute Resolution in New Delhi 26 years ago, and I quote, 'Any democracy worth the name must provide for adequate and effective means of dispute resolution at a reasonable cost; otherwise, the rule of law becomes a platitude and people may take law into their own hands, disrupting peace, order and good governance. Effective dispute-resolution is also necessary to secure the smooth functioning of trade and commerce'."

To make the arbitral process more effective and to bring it at par with the international law on arbitration, the Arbitration and Conciliation Act of 1996 was amended in 2015, in 2019, and in 2021, he said.

https://www.business-standard.com/article/current-affairs/cji-stresses-prominence-of-mediation-for-commercial-dispute-resolution-122031900627_1.html

ICSID Administrative Council Approves Amendment of ICSID Rules

21 March 2022

Member States of the International Centre for Settlement of Investment Disputes (ICSID) have approved a comprehensive set of amendments to ICSID's flagship rules for resolving disputes between foreign investors and their host States.

"The amendment of the ICSID rules is a key achievement for improving international dispute resolution," said David Malpass, President of the World Bank Group and Chair of the ICSID Administrative Council. "The amended rules streamline procedures to enable greater access and speed, increase transparency, and enhance disclosures, with the ultimate goal of facilitating foreign investment for economic growth."

Established in 1966, ICSID is the only multilateral institution with a specific mandate to facilitate the peaceful resolution of international investment disputes under treaties, contracts, and investment laws. ICSID offers rules of procedure that are specifically designed for such disputes, as well as providing expert support to disputing parties and first-class facilities for proceedings.

The ICSID rules for arbitration and conciliation have been updated to further reduce the time and cost of cases, including mandatory timeframes for rendering orders and awards. New expedited arbitration rules are also now available, which would cut case times in half when adopted by parties.

Entirely new procedural rules were developed for mediation and fact-finding. The mediation rules offer a process to support a negotiated resolution of a dispute between parties, while fact-finding provides an impartial and targeted assessment of facts related to an investment. Both may be used as stand-alone procedures or in combination with an arbitration proceeding.

"The project of amending the ICSID rules has been an ambitious undertaking that has involved hundreds of State Officials, legal specialists, and business representatives," said Meg Kinnear, Secretary-General of ICSID. "Their adoption is a testament to the fact that multilateral processes can—and do—deliver tangible and positive results."

Other attributes of the 2022 amended rules include:

- Broader access to ICSID's dispute resolution rules and services. Jurisdictional requirements under ICSID's Additional Facility have been modified, providing States and investors access to Additional Facility arbitration and conciliation where one or both disputing parties is not an ICSID Contracting State. Regional Economic Integration Organizations—such as the European Union—may also be a party to proceedings under the amended Additional Facility Rules.
- Greater transparency. The updated ICSID arbitration rules will further enhance public access to ICSID orders and awards, which benefits legal consistency in tribunal decision making. At the same time, the rules assist parties in identifying confidential information and specify that protected personal information cannot be publicly disclosed.
- Disclosure of third-party funding. For the first time, the ICSID arbitration rules address third-party funding. Disputing parties have an ongoing obligation to disclose third-party funding—including the name and address of the funder—to avoid conflicts of interest that may arise out of such financing arrangements.

The 2022 ICSID Regulations and Rules come into effect on July 1, 2022.

Over the coming months, ICSID will publish guidance notes to assist users in applying the updated rules, as well as offer briefings and courses by request.

Further information on the ICSID rule amendment process—including Working Papers and the input received on them—is available on the ICSID website at *https://icsid.worldbank.org/resources/rules-amendments*

https://icsid.worldbank.org/news-and-events/communiques/icsid-administrative-council-approves-amendment-icsid-rules

"Prepare by knowing your walk away [conditions] and by building the number of variables you can work with during the negotiation… you need to have a walk away… a combination of price, terms, and deliverables that represents the least you will accept. Without one, you have no negotiating road map."

— Keiser

Articles

Status, perspectives, and opportunities for the CISG in South Asia

Luca Castellani
Legal Officer
United Nations Commission on International Trade Law (UNCITRAL)

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is one of the outstanding products of the work of the United Nations Commission on International Trade Law (UNCITRAL) and the most widely adopted substantive commercial law treaty worldwide. It has already been adopted by 94 States, representing all economic and legal systems, and may apply to more than 80% of all the contracts for sale of goods across borders concluded in the world.

The CISG provides a modern and neutral legal framework for the formation and performance of contracts for the international sale of goods. It is the only binding text specifically designed for long-arm transactions. Its features have influenced several regional and national sales law reform projects.

Facilitation of equitable trade has been one of the original goals of the CISG, as reflected in the CISG preamble, and has informed some of the CISG provisions. For instance, the CISG provides flexibility in the terms for notification of non-conformity to address the varying levels of available expertise and specialised machinery in developed and developing countries. The CISG is therefore a truly fair and inclusive text.

The benefits of the CISG cover all phases of the contract. At the formation stage, the choice of the CISG – or of the law of a State party to the CISG – may simplify reaching agreement on the applicable law. At the performance stage, the easy availability of the text of the Convention and of case law applying the CISG (more than 5.000 cases have been reported) facilitates compliance by both seller and buyer and clarifies reciprocal expectations. At the dispute resolution stage, the CISG is often preferred by international arbitrators given its transnational nature and compatibility with all legal systems. In short, the CISG is a must-have in the legal toolbox of experts in international commercial law.

It is important to stress that the parties to a contract for international sale of goods may opt out of the CISG or vary any of its provisions. In other words, the CISG applies to the extent that the parties to the contract have not agreed otherwise, thus providing both legal predictability and flexibility to fully accommodate commercial needs. This is a consequence of the principle of party autonomy that lies at the core of the CISG and of many uniform contract law texts, and that also promotes freedom of the parties in the choice of law and of forum, including arbitration. Issues relating to the incorporation of party autonomy in uniform contract law textshave been discussed in detail in the recent UNCITRAL – Unidroit – HCCH Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales, which illustrates the interrelation among those uniform law texts.

There is a constant flow of new CISG member States belonging to most regions and sub-regions of the world. The recent decision to extend the territorial application of the CISG to Hong Kong, China is remarkable given the importance of that city for international trade and the provision of related legal services.

Unfortunately, the CISG has been least adopted in developing countries where it may be needed the most. The fact that no South Asian country has yet become a party to the CISG is evidence of that sorrow state of affairs, for which there is no easy explanation. Domestic sales law in South Asia is often based on colonial laws based on the English Sale of Goods Act 1893, which is a venerable piece of legislation that, especially when not updated, reflects specific policy decisions and the spirit of its time. Hence, there is awareness in South Asian jurisdictions that sales law requires reform, and efforts have been made to that end since independence, albeit with no success. If domestic law reform did not make it to the legislative agenda, it is no surprise that international law reform has been neglected. However, there may be reasons now to reverse that trend.

South Asian countries are deeply engaged in the global economy. This is true also for Bangladesh, which is a powerhouse in manufacturing goods and has embarked in significant digital transformation. The

law must enable the current complex business models based on cross-border supply chains by introducing predictability and uniformity of legal treatment across jurisdictions and by promoting the use of digital means. Uniform commercial law texts – namely, the CISG, together with UNCITRAL texts on electronic commerce – are the ideal solution to the issue. In that regard, it is noted that Bangladesh has already enacted the UNCITRAL Model Law on Electronic Commerce in its Information & Communication Technology Act, 2006. Bangladesh has also been a pioneer in digital innovation by acceding as one of the first Contracting Parties to the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, a UN/ESCAP treaty that significantly builds on UNCITRAL texts on electronic commerce and its underlying fundamental principles.

The arguments supporting adoption of the CISG have been further reinforced by the recent events. The COVID-19 pandemic has highlighted the need for a coherent legal framework across cross-border supply chains. Otherwise, allocation of risks could take place in an unfair manner, and weaker participants may be penalised. The aftermath of the pandemic has also stressed the need to accelerate digital and green transformation in order to achieve a solid and sustainable economic recovery. As mentioned, the CISG is ready to accommodate digital means. It also allows to incorporate and uphold contractual standards, including those aimed at enforcing environmental, humanitarian, and social principles.

To sum up, Bangladesh may get significant economic and social benefits from adoption of the CISG given its role in manufacturing goods. The webinar organised on 10 March 2022 by the UNCITRAL Secretariat and BIAC has provided a first opportunity to discuss those benefits. It is now up to the local legal community to continue that discussion and advocate for accession to the CISG, which could inspire also other South Asian countries.

> ***"Great progress was made when arbitration treaties were concluded in which the contracting powers pledge in advance to submit all conflicts to an arbitration court, treaties which not only specify the composition of the court, but also its procedure."***
>
> *— Ludwig Quidde*

Tribunal's procedural powers: within or beyond?

Barrister Khan Khalid Adnan
Advocate, Supreme Court of Bangladesh
MCIArb, CIArb Accredited Mediator
Head of the Chamber, Khan Saifur Rahman & Associates

1. Introduction

This article is based on the topic that arbitrators have procedural powers to manage arbitral proceedings. Arbitration is an adjudicative dispute resolution process which is primarily based on party autonomy and the parties' agreement to refer their dispute to independent and impartial arbitral tribunal for final determination.[1] From the moment a tribunal is constituted till the moment it renders its final award, one of the fundamental tasks of the arbitrators is to manage the arbitral process with an overarching respect for due process and natural justice with a view to make an enforceable award.[2] It is, therefore, significantly important for the tribunal to carefully consider what procedural powers they have regarding the conduct of the proceedings, and the scope and limits of those powers, so that it does not travel beyond jurisdiction. These powers are mainly express, discretionary, implied and inherent.

2. Sources, scope and limits: Express and discretionary powers

The sources of the tribunal's express and discretionary procedural powers can be found in the parties' arbitration agreement and the law governing the same, major international instruments, laws of the seat and the institutional rules, if any.[3] There is a suggestion that mandatory provisions of the national law or convention take precedence over the parties' agreement and the institutional rules.[4] Parties' freedom to agree upon the procedure is a central characteristic of arbitration.[5] Absent parties' agreement on procedure, the arbitral tribunal has been vested with wide discretionary powers to conduct the proceedings "as it considers appropriate,"[6] provided that both the parties are equally treated and given a reasonable opportunity to present their case.[7] In exercising its express discretion, the tribunal shall avoid unnecessary delay and expense, and shall also provide a fair and efficient process.[8]

The tribunal has been given wider power to hold case management conference/preliminary meeting to establish procedural matters,[9] order interim measures,[10] continue proceedings in case of default by either party,[11] exercise complete control over the evidentiary hearing,[12] determine the admissibility, relevance, materiality and weigh of any evidence,[13] declare the proceedings closed[14] etc, to manage the proceedings fairly and impartially as between the parties, giving each a reasonable, full and equal opportunity to present its case[15] through adopting a fair, efficient and expeditious procedure avoiding unnecessary delay and expense.[16]

English Arbitration Act 1996 states that the parties should be free to agree how their disputes are resolved, subject only to safeguards as are necessary in the public interest.[17] There is an argument that procedural protections that mandatory law or public policy impose do not generate any positive rules, rather they are specifically aimed at preventing a fundamentally unfair procedure from being agreed by the parties or imposed by the arbitral tribunal.[18] However, public policy is a

1. *Susan Blake, Julie Browne & Stuart Sime, A Practical Approach to Alternative Dispute Resolution (4th edn, Oxford University Press 2014) 421*
2. *Nigel Blackaby and Constantine Partasides QC with Alan Redfern and Martin Hunter, REDFERN AND HUNTER ON INTRENATIONAL ARBITRATION (6th edn, Oxford University Press 2015) 309*
3. *Ramona Elisabeta Cirlig, 'The Arbitral Tribunal's Authority to Determine the Applicable Law in International Commercial Arbitration: Patterns and Trends' (2019) 9 Juridical Trib 18, 19*
4. *Emilia Onyema, 'Power Shift in International Commercial Arbitration Proceedings' 5 <https://eprints.soas.ac.uk/4425/1/power%20shift%20in%20ICA.pdf> accessed 18 September 2021*
5. *UNCITRAL Model Law, Art 19(1)*
6. *UNCITRAL Model Law, Art 19(2)*
7. *UNCITRAL Arbitration Rules, Art 17(1); Arbitration Act 1996 (of England), s 33(1)(a); ICC Arbitration Rules, Art 22(4)*
8. *UNCITRAL Arbitration Rules, Art 17(1); Arbitration Act 1996 (of England), s 33(1)(b)*
9. *ICC Arbitration Rules, Art 24(2); SIAC Arbitration Rules, Art 19.3; SCC Arbitration Rules, Art 28*
10. *UNCITRAL Model Law, Art 17*
11. *UNCITRAL Model Law, Art 25*
12. *IBA Rules on the Taking of Evidence in International Arbitration 2020, Art 8(3)*
13. *UNCITRAL Model Law, Art 19(2)*
14. *ICC Arbitration Rules, Art 27*
15. *LCIA Arbitration Rules, Art 14.1 (i); UNCITRAL Model Law, Art 18*
16. *LCIA Arbitration Rules, Art 14.1 (ii); Arbitration Act 1996 (of England), s 33*
17. *Arbitration Act 1996 (of England), s 1(b)*
18. *Gary Born, 'The Principle of Judicial Non-Interference in International Arbitral Proceedings' (2009) 30 U Pa J Int'l L 999, 1024*

variable concept filled with uncertainty.[19] Tribunal cannot bind the third party to the arbitration agreement.[20] Parties might also restrict tribunal's power by using clear words in their arbitration agreement.[21]

3. Sources, scope and limits: Implied and inherent powers

Implied powers are powers that can be implied or inferred from the powers or broad discretion granted to the tribunal expressly by the arbitration agreement, institutional rules or laws, and these powers can be explained as gap fillers enabling the tribunal to move forward with the proceedings in a manner consistent with the parties' expectations.[22] The arbitrator's power to determine certain aspects of the proceedings, e.g. schedule for exchanging documents, question of bifurcation, determining the number of witnesses, may not be expressly stated requiring the tribunal to take recourse to implied powers.[23] It is interesting to note that when a tribunal under the SIAC Arbitration Rules is bifurcating proceedings, it is exercising an express discretionary power under Art 19.4 of the SIAC Rules, whereas if the tribunal is under an institutional rule that does not have express provision in this regard, it is exercising its implied power.

If a power derives from the nature and function of a tribunal as constituted, the power should properly be labelled inherent to the tribunal.[24] While there is a view that arbitral tribunals have no inherent power,[25] it is now recognised that tribunals do have inherent and implied powers.[26] However, the scope of inherent power is uncertain[27] and they are not unlimited.[28] There may be instances where the tribunal might have to invoke its inherent power to properly function as an adjudicatory body like the court, e.g. to stay parallel proceedings,[29] to impose sanction, to conduct an investigation on fraud or corruption.[30] Tribunals in the U.S. should be very cautious in making procedural determinations based on their inherent power.[31] It is arguable that the limits of implied and inherent powers are the same as described above with the addition that implied and, particularly, inherent powers should be exercised only in compelling circumstances or where inaction might undermine the arbitral process.[32]

4. Conclusion

In the light of the above discussions, indisputably arbitrators have wide procedural powers to manage arbitral proceedings. The tribunal enjoys broad discretion and flexibility to manage the process,[33] to ensure a fair and efficient process. The tribunal adopts and follows the procedure to resolve a substantive dispute, and while it is possible to challenge the award on the basis of procedural unfairness, the same cannot be challenged on merits.[34] Thus, while the tribunal's powers are extensive in managing the process, the tribunal must always keep its eye on the enforcement stage and be mindful of the natural justice/due process requirement.[35] LCIA Rules state that the tribunal has the "widest discretion" in conducting the proceedings bearing in mind its general duties of adhering to the principles of due process.[36] Breach of natural justice would not occur even when the tribunal has taken robust but fair case management decisions.[37] Therefore, I conclude that so long as the tribunal does not follow a procedure having the potential to breach any due process requirement, the award is likely to be upheld. It is all about the process being fair, not necessarily perfect.

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19. *Supra note 3, at 29*
20. *Charles Falconer and Amal Bouchenaki, 'Protective Measures in International Arbitration' (2010) 11 Bus L Int'l 183, 190*
21. *ReliaStar v EMC National Life Company 564 F.3rd 81 (2d Cir. 2009)*
22. *Margaret L. Moses, 'Inherent and Implied Powers of Arbitrators' (2014) 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2501046> accessed 19 September 2021*
23. *Ibid, at 6*
24. *Ibid, at 8*
25. *Latham & Watkins, 'Guide to International Arbitration' < https://www.lw.com/thoughtleadership/guide-to-international-arbitration-2017 > accessed 18 September 2021*
26. *'International Commercial Arbitration' (2014) 76 Int'l L Ass'n Rep Conf 822, 828*
27. *Andrew Poole (Gorrissen Federspiel), 'Take-Aways from the Copenhagen Arbitration Day 2019' (2019) <http://arbitrationblog.kluwerarbitration.com/2019/07/04/take-aways-from-the-copenhagen-arbitration-day-2019/ > accessed 18 September 2021*
28. *Margaret Moses, 'The Growth of Arbitrator Power to Control Counsel Conduct' (2014) <http://arbitrationblog.kluwerarbitration.com/2014/11/12/the-growth-of-arbitrator-power-to-control-counsel-conduct/ > accessed 18 September 2021*
29. *Supra note 20, at 193*
30. *Supra note 22, at 8-10*
31. *Stolt-Nielsen S.A. v AnimalFeeds International Corp 559 U.S. (2010), at 676-77; Wheaton Webb, 'Mind the Gap: Proposing a Tool for Identifying Gaps in Institutional Arbitration Rules' (2017) 13 Fla A & M U L Rev 125, 129*
32. *Rompetrol Group NV v Romania, ICSID Case No ARB/06/03*
33. *UNCITRAL Notes on Organizing Arbitral Proceedings, Art 4*
34. *TMM Division Maritime SA de CV v Pacific Richfield Marine Pvt Ltd [2013] SGHC 186*
35. *New York Convention 1958, Art V(1)(b); UNCITRAL Model Law, Arts 34(2)(ii), 36(1)(a)(ii)*
36. *LCIA Arbitration Rules, Art 14.2*
37. *Kanoria & Ors v Guinness & Anor [2006] EWCA Civ 222, reaffirmed in Cukurova Holding AS v Sonera Holding BV [2014] UKPC 15; Remy Gerbay and Badar Al Raisi, 'Due Process Paranoia (Part 2): Assessing the Enforcement Risk under the English Arbitration Act' (2017) < http://arbitrationblog.kluwerarbitration.com/2017/02/20/due-process-paranoia-part-2-assessing-the-enforcement-risk-under-the-english-arbitration-act/ > accessed 18 September 2021*

Interviews

We have been publishing interviews of leaders and experts from different financial, business, corporate, legal, academia and Government sectors on their perception and understanding of ADR, based on a number of questions put forward by BIAC. We are confident that this will generate more awareness about ADR in the country and importance of introducing it to assist our judicial system in order to reduce the backlog and the time taken to resolve commercial disputes. It is our pleasure to publish interview of Mr. Reshad Imam in the current issue of the BIAC Quarterly Bulletin (BQB). Mr. Reshad Imam is a Partner of AKHTAR IMAM & ASSOCIATES and an Advocate of the Supreme Court of Bangladesh. He is an independent director of a leading financial institution in Bangladesh, Phoenix Finance & Investments Ltd. He is the founder Director & Trustee of Finance, Academy of Law and Policy (ALAP)

Reshad Imam
Barrister –at-Law
Advocate Supreme Court of Bangladesh
Partner
AKHTAR IMAM & ASSOCIATES

BQB: Globally, corporate bodies are moving away from using the traditional court based judicial system for resolving commercial disputes and adopting Alternative Dispute Resolution (ADR). Do you believe that this global best practice has a future in Bangladesh? Why?

RI: This global best practice not only has a future in Bangladesh, it is very much the future so far as dispute resolution is concerned. There is a monumental back log of cases in the Bangladeshi Courts.ADR has the potential not only to provide a cost effective and speedy dispute resolution mechanism for parties to a dispute, thus improving access to justice, but also to provide significant relief to the already over-burdened Courts. However, if we have to reap the benefits of and popularise ADR in Bangladesh, the deficiencies in the laws governing ADR must first be addressed. Countries in the Asia region are bringing about significant amendments to their existing legislation and introducing new legislation to create an ADR-friendly environment. Bangladesh should follow suit.

BQB: What are the main obstacles towards mainstreaming of ADR in our country?

RI: There are many impediments to mainstreaming ADR in Bangladesh. In my opinion, the two most significant hurdles are:

(a) Lack of awareness and training: Despite the presence of arbitration and/or mediation clauses in many contracts, many parties are shockingly unaware of the procedure to be followed in the event of a dispute and the implications of such clauses. Therefore, one can safely assume that at the time of signing such contracts, such parties did not understand the terms of the dispute resolution clauses of such contracts and/or was not made aware by their legal counsels about the meaning and implications of such clauses. Furthermore, even in cases where mediation is mandated by the Court or mediation is preferred by the parties to a dispute, there is a dearth of qualified mediators due to lack of training in this regard. Bangladesh International Arbitration Centre (BIAC) has been doing a commendable job in promoting awareness about ADR through, among others, training sessions, seminars, webinars, workshops, dialogues etc. It is essential that this issue is aggressively addressed by our Government and major stakeholders by conducting extensive awareness campaigns and training programs on ADR in order to educate people about the meaning and benefits of ADR.

(b) Deficiencies in the laws: Unfortunately, Bangladesh has been struggling to implement effective ADR mechanisms despite the existence of a specific procedural law for arbitration i.e. Arbitration Act 2001 and despite several laws mandating or recommending arbitration and/or mediation (Trade Organisations Ordinance 1961, Bangladesh Energy Regulatory Commission Act 2003, Civil Procedure Code 1908, Artha Rin Adalat Ain 2003, The Real Estate

Development & Control Act 2010 etc.) For example, arbitration is one of the main forms of ADR. The Arbitration Act 2001 provides the procedural law for arbitrations in Bangladesh. The main objective behind introducing ADR is to provide a cost-effective and speedy mechanism for dispute resolution. Unfortunately and ironically, arbitrations in Bangladesh have earned the reputation of being far more expensive and time consuming compared to the traditional court-based system. Arbitrations and enforcement of arbitration awards in Bangladesh are not time-bound. As a result, in many instances, arbitration and enforcement proceedings go on for years and years resulting in substantial costs for the parties. The Act provides scope to a party to challenge an arbitration award on vague grounds and without security. As a result, a party invariably gets the opportunity to challenge an award and delay enforcement. In case of domestic arbitrations, a party can challenge an arbitration award by filing an application before the District Judge. The order of the District Judge may then be challenged before the High Court Division, which may then be challenged before the Appellate Division of the Supreme Court of Bangladesh. As a result, the parties have to go through the very same procedure of court-based system which they intended to avoid by inserting an arbitration clause in their contracts. Without delving too deep into all the necessary amendments, the amendments that are urgently required are, among others, as follows: i) an arbitration under the Act should be made strictly time-bound, ii) the Act should contain guidelines for determining fees of arbitrators, iii) the grounds for challenging an award should be further restricted and should be unambiguous, iv) the Act should provide sole jurisdiction to the High Court Division to hear challenges to both domestic and international commercial arbitration awards and impose a strict time-limit for passing such orders and v) the Act should provide an expedited procedure for enforcement of awards.

At the time of vetting commercial contracts, I have always made it a point to explain to my clients the advantages and disadvantages of all the terms of a contract including arbitration clauses. I have come across many clients who, after being informed about the procedure and implications of arbitration clauses, specifically instructed me not to include arbitration clauses in their contracts. Although such reluctance is unfortunate but it is understandable in view of the deficiencies in the Act and the practice in our Courts.

Significant amendments ought to be brought about to the Arbitration Act 2001 and to laws mandating or recommending ADR mechanisms to popularize ADR in Bangladesh.

BQB: What are your thoughts on 'reputation risk', given that the legal cases are heard in courts of Bangladesh while the proceedings are considered to be open to the public domain?

RI: When corporate disputes are resolved through Courts in Bangladesh, there is a significant danger of information regarding business practices/trade secrets of corporate bodies, which are generally considered to be confidential or sensitive in nature, to be accessible and/or available to the public at large potentially resulting in negative publicity. This may have a detrimental impact on the business of such corporate bodies. As such, ensuring confidentiality of disputes and business dealings are important factors in how parties decide the mechanism for resolution of a dispute. ADR may be an effective tool to resolve disputes in a far more confidential manner and therefore may act as an added benefit/incentive for corporate bodies.

BQB: Do you support insertion of ADR clause in all commercial contracts or do you feel the court system can adequately provide risk mitigation coverage without ADR clause in the Contract?

RI: The Courts of Bangladesh are struggling to tackle the massive back log of cases (over 3.9 million and counting). This makes litigation lengthy and expensive. ADR has the potential to make dispute resolution cost effective and speedy and therefore an attractive option for disputing parties. If a robust legal framework is in place for ADR in Bangladesh, the inclusion of an ADR clause in a commercial contract will greatly benefit disputing parties to a contract and at the same time ease the burden on the Courts. However, the existing legal framework of ADR, especially for arbitrations, in Bangladesh does not provide a cost-effective and speedy mechanism for resolution of disputes to the parties and invariably ends up putting further burden on the Courts.

BQB: Money Loans Court Act has not been able to adequately support the financial sector in recovery of bad loans. In many countries, work is underway to offer ADR as an additional tool for the financial sector to mitigate the risk and prevent delay in the settlement and recovery process. What is your opinion about this initiative?

RI: In the event of a dispute, more often than not, there is a complete breakdown in communication between the disputing parties. As such, negotiation and mediation could play a vital role in assisting the parties to reach an amicable settlement. However, in order for negotiation or mediation to be successful, the mediator engaged by the parties/Court or the negotiators engaged by the parties have to be

adequately skilled in this regard. In the absence of a competent negotiator or mediator, such a process may not be successful, thus serving no purpose other than wasting time and adding to legal costs of the disputing parties. As it stands today, there is a dearth of skilled mediators in Bangladesh. As such, despite the inclusion of provisions mandating or recommending mediation in certain laws, the desired effect has not been achieved. Adequate awareness and training campaigns conducted by the major stakeholders has the potential to turn mediation or negotiation into a tool for achieving cost-effective and speedy resolution of disputes.

The procedure for arbitrations under the Arbitration Act 2001, as discussed earlier, has significant room for improvement. Unless a robust legal framework for arbitrations is established through amendments to the existing legislation, arbitrations shall continue to be time-consuming and expensive and may be viewed as adding another layer to the already cumbersome process of dispute resolution in Bangladesh.

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EVENTS NEWS

BIAC's Upcoming Events

Organisation	Events	Date
Bangladesh International Arbitration Centre (BIAC)	Prize Distribution Ceremony of the City Bank BIAC International Inter University Arbitration Contest 2021	12 April 2022
Bangladesh International Arbitration Centre (BIAC) and The Maldives International Arbitration Centre (MIAC)	Signing of Memorandum of Understanding	13 April 2022
Bangladesh International Arbitration Centre (BIAC) And Singapore International Arbitration Centre (SIAC)	Webinar on "Recent Changes and Developments in Arbitration in South Asia"	21 April 2022
Bangladesh International Arbitration Centre (BIAC) And Bhutan Alternative Dispute Resolution Centre	Signing of Memorandum of Understanding	To be announced
Bangladesh International Arbitration Centre (BIAC) and Akhtar Imam & Associates (AIA)	Webinar on the proposed reform of the Arbitration Act 2001 to promote the effectiveness of Arbitration in Bangladesh	To be announced
Bangladesh International Arbitration Centre (BIAC)	Day long training on Arbitration and Mediation	Last week of July 2022

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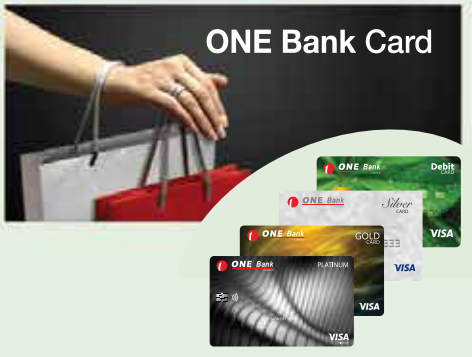

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Corporate HQ:
HRC Bhaban, 46 Kawran Bazar C. A., Dhaka-1215, Bangladesh
Tel : +88 02 55012505, Fax : +88 02 55012516
Click: www.onebank.com.bd **Call Centre:** 16269